

IRS News Release

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Prepared Remarks of IRS Commissioner Doug Shulman at the AICPA Fall Meeting in Washington, D.C., on Nov. 8, 2011

IR-2011-108, Nov. 8, 2011

WASHINGTON—It's great to be here with the AICPA. I think it's fair to say that it has been a busy time for all of us in the tax community...and especially the IRS.

We've had a lot on our plate the past few months...a number of important issues and initiatives, not to mention a shifting but important set of discussions about fiscal choices ahead for our nation.

It's worth pausing to reflect on the critical role that the IRS and practitioners, including CPAs, play in running a fair and efficient system for collecting the revenues that fund the government.

Whatever changes come our way, the productive working relationship that the IRS and CPA community enjoy remains a critical element of our tax system. You provide education and services to your clients... and you provide us with valuable feedback on a wide array of issues that affect taxpayers.

Today, I want to talk for a little bit about some of our priority programs, such as the Return Preparer Program, the evolution of our relationship with our largest corporate taxpayers, including Schedule UTP, and our work on what we're calling a real time tax system.

The common thread that runs through them is points of leverage and working smarter.

Daniel Webster once said that "mind is the great lever of all things." And we're putting our collective minds together to leverage expertise...innovative ideas...new technology...and mutual interests. We want to leverage them all to achieve shared goals...important goals for taxpayers large and small.

Let's start with the Return Preparer Program which is one of the most important initiatives the IRS has undertaken in recent memory...a real game changer that leverages preparers' expertise and commitment to quality service and the integrity of the tax system.

Boiled down to its essence, the program will ensure a basic level of competency for return preparers while enabling us to focus on finding unscrupulous preparers. And let me thank the AICPA. You have been a strong ally in not only our efforts to boost service and compliance, but in fine tuning the program and making it better.

Here's a quick rundown of our efforts to date. First, we had to identify all preparers and have them register.

Since Sept. 28 of last year, almost 740,000 individuals have registered and obtained a Preparer Tax Identification Number, or PTIN, and are now in our tax professional database. And we're already learning some interesting facts about not only the size, but the nature of the tax preparer

community. For example, over 60 percent of PTIN holders are not attorneys, CPAs, or enrolled agents.

PTINs have to be renewed annually and last month we launched renewal open season. We're encouraging those 740,000 PTIN holders to renew before the end of the year. At the same time, we're continuing to work to identify those people who still haven't gotten a PTIN. More on that in a moment.

While PTIN registration was moving on one track, we also issued a number of proposed guidance documents that focused on the next phase of the program.

This phase involves the launch of a new competency test for certain tax return preparers, as well as a new continuing education requirement. In addition to testing, we've issued a number of proposals regarding background checks. Let me give you the state-of-play.

From the beginning, we planned to exempt CPAs, attorneys, and enrolled agents from the testing and continuing education requirements as you already have more stringent testing and education requirements.

But we received valuable input from stakeholders, including the AICPA, that helped us create what I think is a better overall final product. Let me highlight a few examples.

First, is the creation of a "supervised preparer" category which makes a lot of common sense to us ...and to you. We refined the rules that we initially proposed to provide greater flexibility for people who work in a professional firm and prepare returns under the supervision of an accountant, enrolled agent or attorney.

These supervised preparers must obtain a PTIN and renew it each year, but they will be exempt from competency testing and continuing education requirements. You've been helpful to us in determining how to define the supervised preparer category... how to program our online system regarding it ...and how we should notify the supervisors.

Second, while we want to ensure a minimum level of competency in the preparer community, we do not want newly-registered return preparers to oversell what this means. Therefore, we created a disclaimer statement for individuals who will be future Registered Tax Return Preparers. This was to ensure that registration with the IRS is not viewed as an endorsement by the IRS.

And so, Registered Tax Return Preparers will need to include a clear statement on any paid advertising involving print, television or radio that "the IRS does not endorse any particular individual tax return preparer," and that more information is available about this on IRS.gov.

Third, we clarified the level of review IRS will conduct before approving continuing education providers. Indeed, we revised the final Circular 230 to allow for more flexibility in recognizing and approving continuing education programs and providers.

And fourth, we have received input on the recent background check and fingerprinting proposals. While we all share the same goal of ensuring that there is adequate due diligence on people entering this field, the AICPA and others have made a number of important points that we need to think through regarding how best to do this.

And so we've decided to hold off on fingerprinting as we consider the issues that have been raised, and have further discussions with interested parties.

Of course, for return preparers who are not CPAs, attorneys, or enrolled agents we're still going ahead with the launch of the new Registered Tax Return Preparer testing program, which we expect to be up and running soon.

Finally, I've been asked whether the IRS intends to extend the competency tests beyond the 1040 family of tax forms. I recognize that together we've taken a big step to establish a new set of standards for the return preparer community, and it will take time for the IRS and practitioners to implement them. I intend to give this process time...and I have no plans to extend the testing requirement to other forms.

Now, as we set up the registration, testing and continuing education components of our return preparer initiative, it is also important that we focus on ferreting out unscrupulous preparers who damage the good name of honest return preparers and cause damage to the overall tax system.

Therefore, we have a comprehensive strategy to focus on preparer enforcement and compliance. This year, we are focusing on two categories of preparers. First, are those preparers whose clients' returns send out a warning signal of serious problems with accuracy and errors. We are also focusing on those preparers who are not signing returns and identifying themselves with a PTIN, also known as "ghost preparers."

We also intend to continue our outreach to practitioners on compliance topics. And each year we are getting better and better at targeting communications to those who need it most.

Let me give you a high-level overview of our plans for the coming year. Our efforts will be focused on places of highest risk ...places where the vast majority of preparers who play by the rules should want us to focus.

Beginning soon, the IRS will send letters to tax return preparers who have been identified as "high risk." The letters are intended to bring to these return preparers' attention that we've noticed some questionable traits on a number of their Schedules A, C, or E. We ask preparers to review the rules in these areas and to ensure they are meeting their due diligence requirements when interviewing clients.

These letters will also help ensure taxpayers get the service for which they paid and they deserve. And we want to help provide a level playing field to the reputable tax return preparers who abide by the rules. Let me be clear that these letters are sent based on real data showing historical issues with taxpayer returns.

Some additional compliance efforts will include, for example, in-person visits focused on return preparers we've identified as "egregious" with high error rates. And we will be ratcheting up our efforts to identify "ghost preparers."

We will also send letters to return preparers whose clients' returns contain traits commonly associated with highly questionable Earned Income Tax Credit claims. In addition, we will conduct in-person visits with EITC return preparers to discuss due diligence requirements, assessing penalties against those who are found to be non-compliant.

While most return preparers are professionals, who provide honest and excellent service to their clients, some make basic errors that must be addressed. And then there are those who engage in fraud and other illegal activities. Our Criminal Investigation division will continue to conduct undercover shopping visits to return preparers suspected of engaging in fraud, and we will

continue to work closely with the Department of Justice to pursue civil or criminal action against unscrupulous return preparers.

And finally, our Office of Professional Responsibility will continue to ensure high standards of ethical conduct for the practitioner community, including newly-registered return preparers. I think that this office, which operates independently from our enforcement activities, is vital to fair tax administration and I intend to increase the resources devoted to core OPR activities.

Next, I want to spend a little time talking about our efforts to transform our relationship with our large corporate taxpayers.

As I've said before, we need to work smarter. We need to be more efficient. We need to create innovative strategies for issue resolution that are less time and resource intensive for both the IRS and you... and the corporations you may represent. Let me bring you up-to-date on where we stand.

First, is the CAP program, which we made permanent earlier this year. One of the big changes in CAP is that you no longer have to be invited to join the program. Any corporation that meets the program's requirements and wants to enjoy the benefits of open, cooperative, and transparent interactions can now apply.

The number of corporate taxpayers in the program has already grown from 17 in the 2005 tax year – when the pilot began – to 140 taxpayers in the 2011 tax year. We've also expanded CAP by adding two new programs.

The first is a new pre-CAP program that will provide interested taxpayers with a clear roadmap of the steps required for gaining entry into CAP. We've already accepted a number of taxpayers into pre-CAP. The second is a new CAP maintenance phase that's intended for LB&I taxpayers who have been in CAP for several years and have established a track record of working cooperatively with the IRS.

CAP maintenance will allow both the IRS and the taxpayer to minimize resources while still ensuring compliance. It will also allow taxpayers to resolve issues with the IRS as they arise. A small number of taxpayers have now been moved into CAP maintenance.

In recent months I've been talking with CAP taxpayers, and the feedback I've gotten is that the paradigm of transparency and certainty is a welcome change in our tax system.

Another important tool is the Quality Examination Process which replaced the Joint Audit Planning Process. QEP promotes focused exam plans with the core elements being mutual communications, involvement and engagement. It allows us to engage and involve our large corporate taxpayers throughout the examination process...from the earliest planning stages right through resolution of all issues and completion of the case.

QEP conveys a number of benefits to both the IRS and taxpayers. It streamlines processes...reduces burden and duplication...and improves our communications and consistency in our dealings with taxpayers.

We completed our first year of QEP in June and have begun a review of the program. We are also continuing to review the technical quality of our casework.

Fast Track Settlement is an additional resolution tool we're encouraging our agents to use. We've trained our technical employees how to use Fast Track, and have removed internal barriers that may have discouraged its use.

While it's too early to say how many more taxpayers will take advantage of Fast Track, we have witnessed an uptick in participation which is promising. I am committed to expanding our ability to resolve issues more quickly with taxpayers who want to do so.

But whether it's CAP, QEP, Fast Track or any of our other programs, the whole point is to constantly seek improvements...and do a better job each and every day.

We have another important tool in our toolkit that can help us cut through the fog of uncertainty. The Industry Issue Resolution Program – or IIR – can help the IRS and corporate taxpayers reach administrable, common sense solutions for uncertain tax areas.

For example, by using IIR, we resolved some long-standing controversies that had plagued the telecommunications, and transmission and distribution industries for years. We see IIR as a very useful tool for issue resolution and continue to work on a number of new issues.

Let me now turn to our uncertain tax position reporting requirement. It gets to the heart of information we need, while respecting a taxpayer's internal analysis and deliberations. It moves us towards our shared objectives of efficiency, certainty, and consistency.

Here's a quick rundown of where we stand. In September 2010, we released the Final Schedule UTP and Instructions effective for 2010 tax years. The changes we made to the initial proposal addressed a number of taxpayer concerns. For example, the phased-in implementation of the schedule for corporations with assets under \$100 million... the elimination of the requirement to calculate and include a maximum tax adjustment for each position...and the elimination of administrative practice positions address important burden and reporting concerns raised by affected taxpayers and their representatives, while still allowing us to achieve the proposal's goals.

We also clarified and strengthened the policy of restraint through three key changes:

- We provide that disclosing issues on the Schedule UTP does not otherwise affect the protections afforded under the policy of restraint.
- We provide that drafts of issue descriptions and information regarding quantification or ranking of issues are protected under the policy.
- We adopt a policy that we will not seek documents that would otherwise be privileged, even though the taxpayer has disclosed the document to a financial auditor as part of an audit of the taxpayer's financial statements.

As we move forward, we're doing outreach to industry groups to help clarify any issues or questions with the schedule and we established a centralized review process in LB&I to help us to identify trends, understand gaps in guidance and determine the proper treatment of UTPs.

In addition, we created and implemented a process for identifying and centrally collecting returns with UTP schedules. This will ensure that procedures are fully in place for how the new schedules will be used by us and that training has been provided to LB&I personnel prior to the release of UTP schedules to the field.

Now, as with any new and innovative program, training and education are critical for both the IRS and taxpayers. We've now delivered training to our technical employees, such as examiners and specialists. We've been clear in our training that the schedule is not intended as a means for shortcutting other parts of the audit process. Moreover, examiners are expected to use the Schedule UTP information in conjunction with tools, such as the QEP.

And just last week, the LB&I Commissioner issued a memorandum to all LB&I employees that sets forth the procedures that examiners must follow when examining any return containing a Schedule UTP. For example, it spells out that the presence of the Schedule UTP with a return should not, in and of itself, be the sole factor used to determine whether or not to proceed with an examination. In conjunction with that guidance, all employees must complete a training session before starting the examination of any return with a Schedule UTP.

We expected the bulk of returns to start coming in during September of this year... and they did. Let me give you a quick glimpse at our first UTP filing statistics:

- We received approximately 1,500 UTP Schedules containing approximately 3,500 UTP disclosures.
- About half of all Schedule UTP returns filed contained only one uncertain tax position.

Not surprisingly, the top three Code sections were Section 41, research tax credits... Section 482, allocation of income including transfer pricing... and Section 162, trade and business expenses.

Before leaving UTPs, let me add this. Just as this is a learning year for taxpayers, it is also a learning year for the IRS. And as with any process this new, there may be some hurdles...but our entire senior leadership team is committed to working through them. We cannot let the perfect be the enemy of the good.

Successfully implementing UTP rests on our working together to streamline, improve, and change the way we carry out our responsibilities in a manner that will save resources and achieve certainty sooner for taxpayers and the IRS. And I want to continue to stress that you need to raise issues when you see them: A dialogue between us and taxpayers will be crucial as we both learn from this new process.

Finally, let me cast an eye toward the future and a potential new structure that would fundamentally change the way taxpayers and tax practitioners prepare and file individual returns...and one that leverages technological innovations.

We've initially come to call this vision the real-time tax system because it would deal in real time and avoid audits that may take place years after a return is filed. We're moving away from the after-the-fact, or "look-back" model – where we chased after taxpayers who had to hunt for, or recreate records and documentation – to one where we're reducing burden.

Under the vision of a real time tax system, the IRS could embed third-party information into its pre-screening filters, and could provide the opportunity for taxpayers to fix the return before we accept it, if it contains data that does not match our records. This is a tectonic shift.

We would have more accurate returns and deal with many more problems up-front. We could shift resources to spend more money getting it right in the first place, and do less back-end auditing. I've said all along that there are huge compliance and service benefits associated with such a system...not to mention burden reduction for taxpayers.

Now, I've been asked a lot whether this vision is one of the IRS pre-filling tax returns and sending them out. That's not what this project is about. This is about making fundamental improvements to the current system where taxpayers or their tax return preparers are responsible for completing a return and submitting it to the IRS.

A little more than six months ago, I said I wanted to start a dialogue on the vision and engage the business community and other stakeholders. Since then, we have started scoping the work that we would need to undertake to help us make the next big leap in how our tax system fundamentally works.

Technological innovations allow us to process large amounts of information exponentially faster than just a decade ago. We also now have information coming to us in an electronic format, which is a prerequisite to quicker population of our databases and systems. In other words, the pieces are starting to come together. Both internal and external factors make the time ripe to think big, and broad and long-term.

I believe that this vision for a more real-time tax system for the nation is real and doable. For the past six months, we've been taking those first steps down the path toward taking the vision to the next level.

A real time tax system is also all about stakeholders and communities and involving them in the conversation. I'm talking about taxpayers...preparers...software companies... employers...financial institutions...and other parts of government. Indeed, we've begun planning for a public meeting to discuss these issues and solicit feedback and ideas. Stay tuned for more information on this.

Before I take a few questions, let me say that all the initiatives and plans that I've discussed today depend on us working together. Given the enormous challenges and opportunities we face, I believe it is a common obligation we have to America's taxpayers and our nation. Thank you.